PATENT
0425-0836P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicants:	Masaharu HAYASHI et al.	Conf.:	7584
Appl. No.:	09/842,896	Group:	1616
Filed:	April 27, 2001	Examiner:	Alton PRYOR
For:	PLANT-ACTIVATING AGENT		

DECLARATION UNDER 37 CFR 1.132

Commissioner for Patents
P.O. Box 1450
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Sir:

I, Mr. Tadayuki SUZUKI, declare the following.

I am a coinventor of the above-identified application. I am fully knowledgeable of the disclosure of the above-identified application and the field of art of the present invention. I have read and understand the Office Action dated October 7, 2005 (hereinafter "the outstanding Office Action") and the references cited therein to Kim (U.S.P. 5,674,897) and Szoka Jr. et al. (U.S.P. 4,394,149, hereinafter "Szoka").

It is my opinion that the Examiner has mischaracterized the teachings of Kim and the presently claimed invention in making the obviousness rejection of claims 4, 6-8, 10, 12 and 14-19 under 35 U.S.C. § 103(a) over the combination of Kim and Szoka as set forth in the outstanding Office Action.

The Examiner's reasons for finding that the citation of Kim is proper can be found in the following statement:

> Kim teaches a method of applying the composition to plants to control nematodes. Kim does not state that invention activates or promotes plant growth. See abstract, column 4 lines 1-63, column 8 lines 58-65, claims 1-4. However, it is obvious that if the composition is applied to the plant that it would activate plant growth since it is used to control nematodes from destroying plants.

The Examiner indicates that the composition of Kim would aid in controlling of nematodes, and it would follow that by controlling the nematodes, the composition of Kim would help promote plant growth. It is my opinion that promoting plant growth and controlling nematodes are separate concepts. The Examiner's attention is directed to the present specification. It is clear from the present specification, that the inventive plant activating agent shows its effect by aiding in some necessary function for growth of the plant on a cellular level as shown in the following text taken from page 1, line 13 to page 2, line 1:

> It is added by the inventors of the invention that the term "plant growth" includes increasing the amount of growth, increasing the weight of a plant on both sides of the aboveground and the underground. Further increasing greenness of leaves in terms of SPAD, increasing the height of grasses, improving harvest or crop, increasing photosynthesis, accelerating growth of green cells, improving absorption of a fertilizer, increasing sugar content and ascorbic acid of leaves and fruit. More in details, it extends to improving: gloss of leaves, rising-up of leaves, firmness of leaves, an increased thickness of leaves, firmness of stem, short joints of stem, thickness of stem, whiteness of root, the number of fine roots, vivacity or strength of grasses or trees, gloss of fruit, size of fruit, fruiting, color of fruit etc.

The Examiner will note that nowhere in this cited passage is there any indication that the instant method is directed to killing nematodes as taught by Kim. Indeed the present specification has many examples showing the improved plant growth in experiments which are free of nematodes in both the control samples and the experimental samples by adding the plant activating agent of Formula (II).

The Examiner's attention is directed to the examples in the present specification which show that there is improved growth with the plant activating agent of inventive Formula (II). Specifically, the Examiner's attention is directed to Table A1 (test of reproductive ability using chlorella cells) on page 31. Table A1 shows improved reproductive ability of chlorella cells in a Linsmaier-Skoog medium. ***This medium is free of nematodes*** for both the inventive and comparative examples, and yet there is at least a 27% increase using the esters and acids of inventive Formula (II) over the lower molecular weight acids. It is well known to a person skilled in the art that the Linsmaier-Skoog medium, as used in the chlorella cell test of the present application, is used after sterilization in an autoclave. This increase in reproductive ability would not be expected based on Kim's teaching which is limited to the affect of the composition on the nematode population.

Furthermore, Kim does not teach or suggest that the nematode controlling composition can be used to affect plant growth on a cellular level. In other words, based on the teachings of Kim, it is my opinion that the artisan would reasonably believe that there would be no added affect on the plant growth on a cellular level by adding the fatty acid ester of Kim to the composition of Szoka.

As such, it is my opinion that the present invention is not made obvious by the combination of Kim and Szoka.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Tadayuki Suzuki
Mr. Tadayuki SUZUKI

Feb. 7, 2006
Date